

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION

Call to Order: By **CHAIRMAN KATHLEEN GALVIN-HALCRO**, on January 26, 2005 at 3:00 P.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Kathleen Galvin-Halcro, Chairman (D)
Rep. Joan Andersen, Vice Chairman (R)
Rep. Gary Branae, Vice Chairman (D)
Rep. Edward B. Butcher (R)
Rep. Margaret H. Campbell (D)
Rep. Tim Dowell (D)
Rep. Wanda Grinde (D)
Rep. Roger Koopman (R)
Rep. Bob Lake (R)
Rep. Joe McKenney (R)
Rep. Holly Raser (D)
Rep. Scott Sales (R)
Rep. Jon Sonju (R)
Rep. Dan Villa (D)
Rep. John Ward (R)
Rep. Jeanne Windham (D)

Members Excused: None.

Members Absent: None.

Staff Present: Chris Lohse, Legislative Branch
Eddie McClure, Legislative Branch
Nina Roatch-Barfuss, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 397, 1/21/2005; HB 404,
1/21/2005
Executive Action: HB 397; HB 317

HEARING ON HB 397

Sponsor: REPRESENTATIVE TIM DOWELL, HD 8, Kalispell

Opening Statement by Sponsor:

REP. TIM DOWELL opened the hearing on **HB 397**, which dealt with clarifying governance for certain school districts. The sponsor stated that Flathead High School is the largest high school in Montana. Last fall a bond issue was passed and there was authorization for a second high school. However, there is a problem. The Flathead High School is built in the Kalispell Elementary School District. On the board of trustees are members of the elementary school along with members from the other elementary schools that feed into Flathead County High School. The location for the new high school is outside of the Kalispell Elementary District but within the boundary of the present high school district and within the boundary of another elementary district, West Valley Elementary District. Because of its location, the old board will not be allowed to govern the new board. The bill is an attempt to deal with the issue and correct some problems that are in the law and will be created later by the Code Commissioner Bill (SB 24).

Proponents' Testimony:

Joe McCracken, Flathead High School District, Kalispell, explained to the committee that he is currently serving as a consultant for Kalispell schools. He formerly served as Interim School Superintendent for the district on two different occasions in the past seven years. He presented written testimony.
[**EXHIBIT \(edh20a01\)**](#)

Jeff Hindoien, Legal Counsel for Flathead High School District, Kalispell, rose in support of the bill and said he would be available for any legal questions the board might have.

Bob Vogel, Montana School Boards Association, (MSBA), related that **HB 397** is an important bill. He felt it dealt with school board governance and provided clear authority to the Flathead High School District to acquire sites to construct facilities anywhere within the high school district boundaries. It is an important concept for MSBA.

Eric Feaver, Montana Education Association-Montana Federation of Teachers, (MEA-MFT), rose in support of the bill.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

Closing by Sponsor: None

HEARING ON HB 404

Sponsor: REPRESENTATIVE ROGER KOOPMAN, HD 70

Opening Statement by Sponsor:

REP. ROGER KOOPMAN opened the hearing on **HB 404**, by passing out a summary of his bill. The bill addresses the use of volunteers in the public school system. He believes they are under used. He passed out a letter in support of the bill from Steven D. Johnson, Assistant Superintendent for Business and Operations in the Bozeman School System. Another letter in support of his bill was passed out to the committee from Lynne Scalia, Principal/Superintendent, Monforton School District. He also handed out amendments to the bill.

[EXHIBIT \(edh20a02\)](#)

[EXHIBIT \(edh20a03\)](#)

[EXHIBIT \(edh20a04\)](#)

[EXHIBIT \(edh20a05\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 15.5}

Proponents' Testimony: None

Opponents' Testimony:

Eric Feaver, MEA-MFT, testified in strong opposition to the bill. Mr. Feaver feels the bill does far more than the sponsor meant it to do. He declared that it would do nothing helpful toward hiring and retaining teachers. Teachers trying to get into a district as a paid teacher might volunteer for awhile.

{Tape: 1; Side: A; Approx. Time Counter: 15.5 - 28.3}

{Tape: 1; Side: B}

There would be an impact on the Teacher's Retirement System if the bill is implemented. The impact is one that most members of the committee would never be aware of. One of the problems with the Teacher Retirement System is that school positions are being filled by individuals who do not contribute to the system. They aren't paying contributions but they are holding a position that would otherwise be paying into the fund. Volunteers would be

working free and contributing to the problem of an unfunded teacher's retirement. The bill suggests that the money saved by the volunteer program could be put into the paid teachers' salaries. The issue of bargaining salaries and benefits, remains in law. There might actually be a pool of money saved, but it would need to be bargained as to how it would be spent. The suggestion that the district would pay Workman's Compensation for the volunteer, would put a financial burden on the district. The sum of money that the volunteer could deduct from his/her income tax appeared very vague to Mr. Feaver. He wasn't sure any of the suggestions were legal. The way he reads the bill anyone could volunteer to work free, with or without any experience or expertise.

Informational Testimony:

Bob Vogel, MSBA, said his membership was divided on the bill because of the number of issues the bill addresses. Most of the members are very supportive of encouraging volunteerism in the schools. Many people are hesitant about the state entering into the collective bargaining arena and putting parameters on it. He felt Mr. Feaver had covered that area. He addressed the problems that would exist in the area of Workman's Comp. He believes the bill suggests that the school district would retain a salary for the volunteer. In any event, the school would retain the same budget that had been set without the volunteer program, and any money saved could be spent as the school board determined. Some of the ways are listed on Page 2, Line 3. He doesn't agree with the bill Sponsor that it encourages salary retention.

Jim McKeon, Department of Revenue, declared he was present at the meeting to answer any questions during the discussion on the bill.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 9.5}

Questions from Committee Members and Responses:

REP. VILLA speculated that the bill should have a fiscal note. The committee secretary had requested the fiscal note but it was not ready for distribution.

REP. SONJU called for information from **REP. KOOPMAN**. He wondered if the bill was designed so that a certified retired teacher could come into the classroom and teach a subject for a period or two during the day. This might happen if the district could not afford a full time foreign language teacher, or the district might not be able to find one. **REP. KOOPMAN** assured the REPRESENTATIVE that he was correct and that there are schools that are currently doing what he described.

REP. RASER sought information from Eric Feaver. She was curious as to whether there is anything in current law that would prohibit a teacher from volunteering. **Mr. Feaver** replied there is nothing in law but there might be some consequences. If the district contract is silent in addressing that particular situation, there is nothing to prevent volunteers in the school system. **REP. RASER** stated that the use of volunteers had been discussed in her local school. She questioned whether a school could have an agreement with the teachers' union that would allow the school district that had difficulty funding or finding a qualified person for a small position in the school to use a volunteer. She wished to be assured that the situation she described could happen as the law presently reads. **Mr. Feaver** said it could happen and he would encourage the school to have an agreement about the use of volunteers. He emphasized that if the volunteer was not certified, the school could have an accreditation problem with the state.

REP. WARD requested information from Mr. Feaver about MEA-MFT's concerns about the infringement on labor contracts. **Mr. Feaver** said his concern was found on the last page of the bill in the discussion about collective bargaining. **REP. WARD** stated the bill seemed to fly in the face of and be contrary to the spirit and intent of No Child Left Behind Act. **Mr. Feaver** felt the bill could be interpreted in that manner. He said the bill could be a step back and the bill is very vague about the services it would offer.

REP. LAKE requested information from Jim McKeon. The **REPRESENTATIVE** questioned the legality of claiming costs for money not received by the volunteer, though time was given. **Mr. McKeon** told the committee that under federal law, there is no valuation on services performed as a volunteer. You cannot put a basis or value on the volunteered time. **REP. LAKE** asked if that meant the deductions talked about in the bill would not be allowed. **Mr. McKeon** conveyed that under federal law, they are not allowed as a deduction because the value of one's time is not an allowable deduction. Contributions are allowed for volunteering in the sense that mileage could be utilized getting the volunteer to and from the school. Deductions are based on an expense. Under federal law there could be a consideration that there was indirect payment received and then the compensation was donated back to the school district. That is a taxable transaction.

REP. LAKE required information from Bob Vogel as to how often a rural school is unable to find a qualified teacher for a requested subject. **Mr. Vogel** reported that it happens quite often. **Mr. Vogel** noted there are off-site learning programs to

address the problem. **REP. LAKE** questioned whether the bill would help rural schools in Montana fill gaps in their teaching staff. **Mr. Vogel** said, "He could see where it would in terms of providing opportunities that would not otherwise be available."

REP. RASER solicited information from Jim McKeon. She understood that the tax deduction talked about in the bill was not a legal federal deduction but she questioned whether it would be a legal state tax deduction. **Mr. McKeon** told her the bill itself would make it a legal state income tax deduction. The idea is contrary to the principles of taxation and deduction. He emphasized that deductions are usually allowed due to expenditures. The bill would allow a deduction where there is no income compensation. **REP. RASER** asked him to walk her through an example. **Mr. McKeon** used an example of a person volunteering to teach a class, such as a German class for non-compensation. There would be no income, but the bill allows the person to take a deduction equal to what the person would have earned, had he/she been compensated.

REP. RASER questioned whether the state would note a fiscal impact due to volunteers being allowed to make such deductions. It appeared to her that it would reduce the Montana taxable income. **Mr. McKeon** said, "That is correct." He noted that for every dollar reduced in the state income, there would be a 6.9 reduction in revenues.

REP. GALVIN-HALCRO sought information from Eric Feaver. She was wondering if he was aware of any school districts in the state that wanted to use volunteers in their building and ran into a problem trying to do so. **Mr. Feaver** responded that on occasion volunteers can be a problem. He cannot say that the bill is designed to create problems. Schools are obligated to do background checks on all employees and the bill does not address what would be done about volunteers in this area. **REP. GALVIN-HALCRO** urged him to give the committee some information on a background check. **Mr. Feaver** informed the committee that most schools require background checks, but the candidate for the job is asked to pay the \$50 fee. He thought that if a person had volunteered, then the school should be responsible for the fee.

REP. GALVIN-HALCRO wished to address the No Child Left Behind Act which is before the schools. She informed him that there are school districts across the state today that are not meeting adequate yearly progress, not because the entire building has not achieved higher standards, but because a subgroup in the building has not achieved adequate yearly progress. She questioned, "If there was a substitute teaching a class where there may be a number of students who may not be achieving

adequate yearly progress, what is the burden put on the children so they can be moved to another district?"

{Tape: 1; Side: B; Approx. Time Counter: 9.5 - 30}

{Tape: 2; Side: A}

Mr. Feaver submitted that it puts a harsh burden on the child and on the school district that could meet the needs of the child. The bill being offered would bring many questions of accountability to the school district. It is his belief that the No Child Left Behind Act is the greatest unfunded mandate the state has before it. **REP. GALIVN-HALCRO** inquired of **Mr. Feaver** to discuss the No Child Left Behind Act in regards to highly qualified teachers teaching positions that they are highly certified in; how would the school be able to test a volunteer as to whether he/she is highly qualified. **Mr. Feaver** reminded her that there are credentials that the No Child Left Behind Act presumes the teacher to have. He feels the bill is inviting unqualified persons into the classroom. **Mr. Feaver** also reminded the REPRESENTATIVE that the school would have to notify the parent of the child working with an unqualified volunteer.

REP. ANDERSEN petitioned information from Bob Vogel. She remembered him saying that there are schools in the state that are using a volunteer to teach a subject area which the school was unable to find a qualified teacher to fill the position. She inquired whether he knew if the volunteer was qualified to teach the subject area. **Mr. Vogel** remarked that he is not familiar with the numbers across the state, but said there are instances where it is happening. The teachers are not volunteers but in some instances are not certified in the area being taught. The school is in violation of state accreditation standards. **REP. ANDERSEN** inquired whether there were many cases where someone comes into the school to teach for one period a day. **Mr. Vogel** testified that he knew of a number of instances where a teacher came to the school to teach a limited course load.

REP. BUTCHER remarked that he understood the thoughts behind **Mr. Feaver's** testimony but found himself surprised at MSBA's feelings about the bill. He explained that he knew of cases where there were retired engineers with Doctor of Philosophy or Masters degrees, much higher qualified in the subject matter than a lot of teachers in high school. He believes the individuals have time on their hands and would love to teach as they are allowed to do in colleges. The REPRESENTATIVE believes it would be an incredible opportunity for a school district to use. **Mr. Vogel** believes it is difficult to find the individuals the REPRESENTATIVE spoke of in a rural community where there is the greatest need.

REP. BUTCHER related that he knew of cases where a retired person would be available and he wondered if MSBA would be excited to have that kind of talent available in the school. **Mr. Vogel** informed him that MSBA supported a bill in the last session that would allow a retired teacher in a community; as long as there wasn't another applicant for the position, to come out of retirement and teach. **REP. BUTCHER** believes, due to Mr. Vogel's comments, that MSBA should be more interested in the bill. **Mr. Vogel** stated that the bill is of interest to MSBA to the extent that they like to encourage volunteerism in the schools and they think members of the community bring another avenue of exposure to students. MSBA is also interested in schools providing an accredited program taught by certified teachers.

REP. BUTCHER believes one of the blocks in the accreditation issue and certification is not how much knowledge a person has in a field, but the fact that a person has to jump through all the hoops in teacher education. **Mr. Vogel** said, "Yes, there are some abilities that not every individual, whether they be a specialist in a field, have to become a good teacher." **REP. BUTCHER** clarified that at one time he was certified to be a high school teacher and also taught college. After he let his certification lapse, he desired to volunteer as a high school teacher, but OPI informed him that he needed more than a year of education to become certified again. He held that it didn't matter what courses he would take. The **REPRESENTATIVE** is looking to MSBA for some flexibility in the situation. **Mr. Vogel** reminded the **REPRESENTATIVE** that school boards do not partake in accreditation and certification issues.

Closing by Sponsor:

REP. KOOPMAN felt that the questioning process by the committee got off track of the intent of the bill. He reminded the committee that there was nothing in the bill that circumvented the requirement of certification. Certification is not always an option for a school district. It was not his intent to suggest that people could volunteer for positions where they were not qualified.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 21}

EXECUTIVE ACTION ON HB 397

Motion/Vote: **REP. DOWELL** moved that HB 397 DO PASS. Motion carried unanimously by voice vote.

Motion: REP. LAKE moved, without objection, that HB 397 be placed on the consent calendar.

EXECUTIVE ACTION ON HB 317

Motion: REP. BRANAE moved that HB 317 DO PASS.

Discussion:

REP. ANDERSEN questioned the wording in Line 19, the last four words, "...located within the district...." She pondered whether the committee wanted to amend the bill by taking those words out of the bill.

REP. WARD affirmed that the committee had contemplated taking the words out of the bill but decided against that action.

REP. VILLA asked when multi-district training opportunities were discussed, it was obvious to him that someone was going to meet outside of their district. He questioned how that would be addressed.

Mr. Vogel, without objection, offered information to the committee. He thought the question centered on consortium meetings that were going to be held within the district but not at the usual location; or such as the board attending the state convention and participating in a training session. Present law speaks to and allows those situations. The bill deals with allowing a consortium meeting of several districts. The meeting would meet the state laws governing a board meeting, such as noticing and recording minutes, etc.

Vote: Motion on HB 317 carried unanimously by voice vote.

ADJOURNMENT

Adjournment: 4:25 P.M.

REP. KATHLEEN GALVIN-HALCRO, Chairman

NINA ROATCH-BARFUSS, Secretary

KG/nr

Additional Exhibits:

EXHIBIT ([edh20aad0.TIF](#))